

FILED
JUN 26 2008
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

William Bullock Stewart III, et al,

NO. C 08-2143 RS

Plaintiffs,

**ORDER GRANTING
PLAINTIFF'S MOTION TO
DISMISS**

v.

San Francisco Police Credit Union, et al.,

Defendants.

On June 25, 2008, *pro se* plaintiff William Stewart III filed a motion requesting that his case be dismissed with prejudice because: (1) the claim was never properly served; and (2) he improperly filed the case. The Court interprets this motion as a motion made under Rule 41(a)(1) of the Federal Rules of Civil Procedure. Rule 41(a)(1)(A) permits a plaintiff to dismiss an action without a court order before the opposing party serves an answer or files a motion for summary judgment. Fed. R. Civ. P. 41(a)(1)(A). Rule 41(a)(1)(B) states that unless the notice states otherwise, the dismissal is without prejudice. Fed. R. Civ. P. 41(a)(1)(B). Here, defendants have not filed an answer and Stewart's motion specifically asks for dismissal with prejudice.

1 The Court, therefore, will grant Stewart's motion to dismiss with prejudice.

2 IT IS SO ORDERED.

3
4 Dated: 6/25/08


RICHARD SEEBORG
United States Magistrate Judge

1 **THIS IS TO CERTIFY THAT A COPY OF THIS ORDER WAS MAILED TO:**

2 William B Stewart, III
3 2094 El Camino Real
4 #218
5 Santa Clara, CA 95050

6 Rosalie A Guancione
7 15732 Los Gatos Blvd
8 #410
9 Los Gatos, CA 95032

10 Dated: June 26, 2008

11 151 / BHK
12 Chambers of Magistrate Judge Richard Seeborg
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